

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel Pearce	Team: Team # 1	CCRB Case #: 201103232	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 03/13/2011 12:35 AM	Location of Incident: Hemlock Street and Fulton Street	Precinct: 75	18 Mo. SOL 9/13/2012	EO SOL 9/13/2012	
Date/Time CV Reported Mon, 03/14/2011 2:55 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 03/14/2011 2:55 PM		
Complainant/Victim	Type	Home Address			
Witness(es)	Home Address				
Subject Officer(s)	Shield	TaxID	Command		
1. POM Joseph Swickicki	21546	947528	PBBN		
Witness Officer(s)	Shield No	Tax No	Cmd Name		
1. POM Rafael Zaldivar	09441	947874	PBBN		
Officer(s)	Allegation			Investigator Recommendation	
A.POM Joseph Swickicki	Discourtesy: PO Joseph Swickicki spoke obscenely and/or rudely to § 87(2)(b)				

Case Summary

§ 87(2)(b) filed this complaint with the CCRB by phone on March 14, 2011 (encl. 3 A-B). On March 13, 2011, at approximately 12:35AM, § 87(2)(b) was walking to a restaurant on Fulton Street near Hemlock Street in Brooklyn when he noticed four uniformed officers surrounding an unidentified individual who had been stopped by two unidentified officers. The other two officers present were identified as PO Joseph Swicicki and PO Rafael Zaldivar, both from the 75th Precinct Impact Response Team. When § 87(2)(b) stopped to observe this stop, the following allegations resulted:

Allegation A-Discourtesy: PO Joseph Swicicki spoke obscenely and/or rudely to § 87(2)(b)

§ 87(2)(g)

On March 17, 2011, the undersigned presented mediation to § 87(2)(b) § 87(2)(b) rejected mediation, § 87(2)(b)

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-year-old Hispanic male with buzzed black hair and brown eyes, who is 6'2" and weighs 208 pounds. § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on April 8, 2011 (encl. 5 A-G). § 87(2)(g)

On March 13, 2011, at approximately 12:35AM, § 87(2)(b) was driving westbound on Fulton Street in Brooklyn with his friend, § 87(2)(b) and her friend § 87(2)(b). They were preparing to go to a 24-hour fried chicken restaurant on Fulton Street near Hemlock Street so that § 87(2)(b) could use its restroom. § 87(2)(b) parked the car on the north side of Fulton Street, between Hemlock and Crescent Streets, close to the intersection at Crescent Street. § 87(2)(b) was wearing dark blue jeans, black sneakers, and a V-neck sweater. The three of them exited the vehicle and walked eastbound on the north side of Fulton Street towards the restaurant. They walked past four uniformed officers. There were two marked patrol cars parked nearby, one of which was parked across the sidewalk and the other of which was double-parked in the westbound lane of Fulton Street.

The officers were gathered around and had apparently stopped an unidentified young black male civilian, whom § 87(2)(b) overheard "screaming and cursing" at the officers, asking the officers why, after searching him, they had not let him go. They were standing near the entrance of a bank parking lot, just east of the patrol car parked across the sidewalk. The stopped individual was angry with officers for having searched him. After passing the officers, § 87(2)(b) decided that he wanted to observe the interaction, and so he stopped approximately ten feet behind an officer who was identified by a summons later issued as PO Joseph Swicicki of the 75th Precinct and whom he described as a white male, 6'2", in his mid-to-late twenties, with a

slim build, blue eyes, a cleanshaven face, and short black hair. § 87(2)(b) and § 87(2)(b) remained with § 87(2)(b) at this time, and PO Swicicki had his back to them. § 87(2)(b) later told § 87(2)(b) that PO Swicicki had winked and smiled at her as they were initially passing him.)

PO Swicicki turned around, noticed § 87(2)(b) and instructed him to keep moving. § 87(2)(b) moved away, approximately two storefronts over, and began standing in front of the restaurant, from where he was able to continue observing the officers. § 87(2)(b) was approximately thirty feet away from PO Swicicki at this time. § 87(2)(b) went inside the restaurant. There were two unidentified civilians standing in front of the restaurant, and they had been standing there since before § 87(2)(b)'s arrival in the area. These civilians never interacted with § 87(2)(b) or with any of the police officers. A few seconds later, PO Swicicki observed § 87(2)(b) again and, without moving from his position, loudly said, "Mind your fucking business, bro." (In his initial complaint narrative and phone statement, § 87(2)(b) noted that PO Swicicki told him to mind his business, though § 87(2)(b) did not mention PO Swicicki cursing at this time.) § 87(2)(b) did not say anything in response, but he drew a square in the air with his hands, as if to suggest that the scene he beheld had been involuntarily framed for him, and that he could not help but observe the encounter. § 87(2)(b) was inconsistent during his CCRB interview with regards to whether or not § 87(2)(b) was present when PO Swicicki told him to mind his "fucking business.")

§ 87(2)(b) then told § 87(2)(b) that they should go inside. Before § 87(2)(b) and § 87(2)(b) entered the restaurant, PO Swicicki began walking towards § 87(2)(b) and, while walking over, he asked § 87(2)(b) for his ID. § 87(2)(b) stopped, and did not go inside the restaurant. When PO Swicicki reached § 87(2)(b) he asked § 87(2)(b) again for his ID. § 87(2)(b) asked PO Swicicki, "What is the probable cause?" and asked what he was "doing wrong." PO Swicicki said, "Shut up and just give me your ID, bro." § 87(2)(b) again asked why PO Swicicki was asking for his ID. PO Swicicki would not answer this question. PO Swicicki asked, "Do you want to go to jail?" An officer whose name § 87(2)(b) did not obtain but who was identified by the investigation as PO Rafael Zaldivar of the 75th Precinct—§ 87(2)(b) described him as a white male, 6'0", in his mid-thirties, "on the heavy side," with short black hair—walked over to § 87(2)(b) and PO Swicicki, and he told § 87(2)(b) to provide his ID to PO Swicicki. No reason was ever given for the requests posed by the officers. § 87(2)(b) removed his wallet in order to provide his ID. § 87(2)(b) held the wallet in his left hand, and before removing his ID, he asked again why he needed to provide his ID. § 87(2)(b) was standing next to § 87(2)(b) at this time.) PO Swicicki grabbed § 87(2)(b)'s right wrist with his right hand, and he placed his left hand on § 87(2)(b)'s elbow, hyperextending his arm and twisting his wrist inward. § 87(2)(b)'s wallet was still in his left hand. PO Zaldivar said to PO Swicicki something to the effect of "let him go." PO Swicicki let go of § 87(2)(b)'s arm, and § 87(2)(b) provided his ID. PO Swicicki took the ID and walked over to the double-parked RMP with PO Zaldivar.

An unidentified officer whom § 87(2)(b) described as a Hispanic male, 6'5", in his late twenties or early thirties, with a heavy build, tan skin, short black hair, and a slight accent walked over to § 87(2)(b) staying with him while the other two officers were near their patrol car. (At some point, the unidentified Hispanic officer's unidentified partner, an Asian male in his late twenties or early thirties, with a slightly heavy build and black hair, entered the patrol car parked across the sidewalk and remained in the front-passenger seat of the patrol car.) § 87(2)(b) asked the unidentified Hispanic officer if he must identify himself when the officer requesting identification has no "probable cause." The unidentified Hispanic officer would not answer any of

§ 87(2)(b) s questions or make eye contact with him. The unidentified Hispanic officer only shook his head. PO Swickicki overheard § 87(2)(b) s questions as he was preparing to enter the passenger seat of the RMP, and he called out, “Oh, you went to fucking Harvard?” § 87(2)(b) did not mention any remark to this effect in his initial complaint narrative, and although he mentioned a remark to this effect in his additional phone statement, § 87(2)(b) did not mention PO Swickicki cursing at that time.) § 87(2)(b) replied, “No.” PO Swickicki then entered the RMP, and PO Zaldivar remained standing outside of it. § 87(2)(b) was still present with § 87(2)(b) at this time. § 87(2)(b) exited the restaurant shortly after PO Swickicki’s remark about Harvard was made.

Shortly thereafter, PO Swickicki exited the RMP and walked back to § 87(2)(b) with a summons in-hand. PO Swickicki asked § 87(2)(b) if he could “be a gentleman now.” He then told § 87(2)(b) that he was giving him a summons for § 87(2)(b), as PO Swickicki had twice asked him to move. § 87(2)(b) asked him if he needed to “completely leave Fulton Street” because PO Swickicki had instructed him to move. § 87(2)(b) added, “I’m poor, and that’s why I didn’t go to Harvard. But I could.” PO Swickicki then left the scene with PO Zaldivar. (PO Swickicki was the operator of the RMP.) § 87(2)(b) experienced pain in his elbow as a result of PO Swickicki’s use of force, but there was no bruising or visible injury, and § 87(2)(b) did not seek medical treatment after this incident.

Witness: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-year-old Hispanic female.

§ 87(2)(b) provided a phone statement on April 28, 2011 (encl. 7 A). § 87(2)(g) § 87(2)(b) noted that she was intoxicated at the time of the incident, as she had been drinking earlier that night. § 87(2)(b) stopped to observe the officers’ interaction with the unidentified stopped civilian. There were other civilians also watching. An officer identified by the investigation as PO Swickicki told § 87(2)(b) to move. § 87(2)(b) asked why, and PO Swickicki reiterated his command. This exchange repeated, and PO Swickicki was very insistent. § 87(2)(b) went inside the restaurant to purchase food. When § 87(2)(b) exited the chicken restaurant, PO Swickicki was “screaming” at § 87(2)(b) telling him to “shut up,” and commanding him to “move” and “get the hell out,” despite the fact that § 87(2)(b) had already complied by moving further from the stopped civilian and closer to the restaurant. An unidentified Hispanic officer joined PO Swickicki in telling § 87(2)(b) move.

When § 87(2)(b) refused to provide his ID, § 87(2)(b) told § 87(2)(b) to give his ID to PO Swickicki in order to defuse the situation. § 87(2)(b) explained to § 87(2)(b) that he knew his rights and did not have to give his ID to PO Swickicki. PO Swickicki then grabbed § 87(2)(b) by the arm and pushed him against an unidentified object. § 87(2)(b) shouted, “You’re not supposed to do that!” PO Swickicki ultimately let § 87(2)(b) go, and § 87(2)(b) handed his ID to PO Swickicki. PO Swickicki left for a moment. § 87(2)(b) spoke with the unidentified Hispanic officer. PO Swickicki returned and handed a summons to § 87(2)(b).

Witnesses Not Interviewed

- § 87(2)(g)

NYPD Statements:

Subject Officer: PO JOSEPH SWICICKI

- *PO Joseph Swicicki is a § 87(2)(b)-year-old white male with hazel eyes and brown hair, who is 6'0" tall and weighs 190 pounds.*
- *PO Swicicki worked from 12:00PM on March 12, 2011, until 3:05AM the following morning. From 5:30PM until the end of this tour, he was assigned to 75th Precinct Impact Overtime with PO Zaldivar, and he was the operator of marked RMP 2029.*

Memo Book

PO Swicicki noted in his memo book that at 12:35AM on March 13, 2011, he issued a § 87(2)(b) summons because § 87(2)(b) refused to disperse when asked multiple times to leave the sidewalk during a routine stop (encl. 8 A-C). PO Swicicki noted that § 87(2)(b) “made the situation very unsafe for PO [Swicicki].”

Summons

On March 13, 2011, at 12:35AM, at the intersection of Fulton and Hemlock Streets, PO Swicicki issued summons number § 87(2)(b) to § 87(2)(b) for § 87(2)(b) (encl. 9 A).

CCRB Testimony

PO Swicicki was interviewed at the CCRB on May 10, 2011 (encl. 10 A-C). On March 13, 2011, at approximately 12:35AM, PO Joseph Swicicki was driving RMP 2029—his partner, PO Rafael Zaldivar, was the recording officer—and they saw an unidentified officer and an unidentified sergeant from another command (PO Swicicki believed that both hailed from the 90th Precinct) who had stopped an unidentified male civilian on Fulton Street near Hemlock Street in Brooklyn. Both the officer and sergeant were male, though PO Swicicki could not describe them, nor could he recall their respective ethnicities. PO Swicicki could not describe the civilian, and he could not recall whether he was ever placed in handcuffs. PO Swicicki pulled over nearby, and he and his partner exited the RMP. There were no additional members of service present aside from the four above-mentioned. PO Swicicki never learned why the officer and sergeant had stopped the unidentified civilian.

The civilian was irate, screaming and cursing. Aside from shouting, “Pigs,” and, “This is fucking bullshit,” PO Swicicki could not recall the content of the civilian’s remarks. A small crowd of curious passersby began forming around the officers and the civilian after PO Swicicki and his partner exited the RMP—PO Swicicki estimated that there were between five and eight people, and they were standing within five feet of the officers—and PO Swicicki observed § 87(2)(b) around this time, standing between three and four feet behind PO Swicicki himself. § 87(2)(b)’s proximity made PO Swicicki feel “very unsafe.” § 87(2)(b) appeared to have more than two friends, male and female, with him at the time, though at some point they went into a nearby store, the location of which PO Swicicki could not recall. (PO Swicicki could not recall the points during which § 87(2)(b)’s friends were present.) The members of the crowd were not saying anything at this time. PO Swicicki and PO Zaldivar attempted to disperse this burgeoning crowd. All members of the crowd aside from § 87(2)(b) complied with the officers’ requests to disperse. § 87(2)(b) said, “What are they doing? What are they harassing him?”

PO Swicicki asked § 87(2)(b) repeatedly to move, issuing this command between five and ten times. Each time § 87(2)(b) refused, saying, “I’m not leaving.” (At some point, the unidentified civilian was released, and PO Swicicki was not sure if the unidentified officer and sergeant filled out a 250 with regards to this encounter.) § 87(2)(b) was standing in the middle of the sidewalk, forcing the numerous passing pedestrians to walk into the street in order to go around him. (PO Swicicki noted, however, that the sidewalk is of normal width and permits people to walk abreast of one another.) After approximately the tenth time PO Swicicki asked § 87(2)(b) to move, PO Swicicki asked him for his ID, and told him that he would be placed under arrest if he failed to provide his ID. PO Swicicki told § 87(2)(b) that he would have to be brought back to the nearby precinct in order to determine § 87(2)(b)’s identity. § 87(2)(b) refused to provide his ID. PO Zaldivar asked § 87(2)(b) to provide his ID in order to make the situation easier. (PO Swicicki did not recall § 87(2)(b) ever interacting with the unidentified officer or sergeant.) PO Swicicki told § 87(2)(b) “I asked you to leave multiple times. You’re making me and my partner feel unsafe, you’re blocking pedestrian traffic, and I need your ID to write you a summons.” § 87(2)(b) said that he did not want a summons.

PO Swicicki moved towards § 87(2)(b) to “grab him” in order to place him under arrest, whereupon § 87(2)(b) stepped backwards and provided his ID. (This was approximately five minutes after PO Swicicki first became engaged with § 87(2)(b). PO Swicicki did not actually grab § 87(2)(b) though his hand may have “brushed” § 87(2)(b)’s hand. PO Swicicki returned to the RMP with § 87(2)(b)’s ID and wrote him a C summons. PO Zaldivar remained outside of the vehicle during this time. He returned to § 87(2)(b) shortly thereafter and handed him a summons for disorderly conduct. (PO Swicicki could not recall if § 87(2)(b)’s friends were present at this time.) PO Swicicki never cursed in the presence of § 87(2)(b) and he specifically did not say, “Mind your fucking business,” or, “You went to fucking Harvard?” There was no discussion of where § 87(2)(b) attended school, and PO Swicicki never heard § 87(2)(b) address the legality of PO Swicicki requesting his identification. Aside from possibly brushing § 87(2)(b)’s hand, PO Swicicki never made physical contact with § 87(2)(b).

Witness Officer: PO RAFAEL ZALDIVAR

- *PO Rafael Zaldivar is a § 87(2)(b)-year-old Hispanic male with brown eyes and buzzed brown hair, who is 6’0” tall and weighs 226 pounds.*
- *PO Zaldivar worked from 5:30PM on March 12, 2011, until 4:05AM the following morning. He and PO Joseph Swicicki were assigned to Target Auto, which primarily addresses quality of life offenses.*

Memo Book

PO Zaldivar had noted in his memo book that at 12:35AM on March 13, 2011, “PO [Swicicki] wrote C summons number § 87(2)(b) to § 87(2)(b) for refusing to disperse after a lawful order” (encl. 11 A-C).

CCRB Testimony

PO Zaldivar was interviewed at the CCRB on June 10, 2011 (encl. 12 A-B). § 87(2)(g) Between five and ten passersby had gathered around the unidentified stopped individual before the officers stopped to assist the two unidentified officers. After stopping and exiting the RMP, the unidentified officers stood with the individual in the center of the sidewalk, and PO Swicicki and PO Zaldivar stood opposite each other, approximately ten feet apart, with the individual standing between them,

approximately five feet from each of them. PO Zaldivar never spoke with the unidentified officers or with the individual that had been stopped. PO Zaldivar observed § 87(2)(b) standing directly behind PO Swicicki, within one foot of him. PO Swicicki instructed the crowd to disperse and most members of the crowd complied aside from § 87(2)(b) (PO Zaldivar noted that he did not fear for his safety during this incident.) § 87(2)(b) was with two unidentified female friends who remained in the vicinity after PO Swicicki issued the instructions to disperse. § 87(2)(b) was “going off” and “running his mouth,” though § 87(2)(b) “wasn’t speaking with anyone directly.”

PO Zaldivar could not recall whether § 87(2)(b) had been told that he would receive a summons before PO Swicicki asked him for his ID. (PO Zaldivar could not recall how many times this request was issued.) PO Swicicki informed § 87(2)(b) that he would be placed under arrest, and PO Swicicki removed his handcuffs and walked towards § 87(2)(b). § 87(2)(b) said, “Alright, alright,” and provided his ID to PO Swicicki. PO Zaldivar did not recall PO Swicicki making any physical contact with § 87(2)(b) during this incident, and PO Swicicki did not have to make physical contact with § 87(2)(b) in order to obtain his ID. PO Zaldivar could not recall whether he himself handled § 87(2)(b)’s ID. PO Zaldivar could not recall whether § 87(2)(b) asked any of the officers on the scene about the legality of his being stopped. § 87(2)(b) was “screaming” and “rambling” about the fact that he was receiving a summons. § 87(2)(b) was then given a “§ 87(2)(b) summons.

PO Zaldivar did not hear PO Swicicki make remarks about § 87(2)(b)’s educational background, nor did he hear PO Swicicki curse while in the presence of § 87(2)(b). PO Zaldivar did not hear PO Swicicki say to § 87(2)(b) “You went to fucking Harvard?” or, “Mind your fucking business.”

NYPD Document

MISD Warrant Check Information

- On March 13, 2011, at 12:37AM, a warrant check of § 87(2)(b)’s name was conducted by PO Thomas Suchorzepka of Patrol Borough Brooklyn North (encl. 13 A).

Summons for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of June 14, 2011, with regard to the incident (encl. 18 F).

Civilian Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 2 A).

Subject Officer CCRB History

- PO Swicicki has been a member of the service for two years and there are no substantiated CCRB allegations against him (encl. 1 A).

Conclusion

Identification of Subject Officer

- PO Swicicki acknowledged this encounter with § 87(2)(b)

Allegations Not Pleaded

§ 87(2)(g)

[REDACTED]

Investigative Findings and Recommendations

Allegation A-Discourtesy: PO Joseph Swicicki spoke obscenely and/or rudely to § 87(2)(b)

§ 87(2)(b) alleged in his verified statement that PO Swicicki said to him, “Mind your fucking business, bro,” and “Oh, you went to fucking Harvard?” § 87(2)(b) did not allege that PO Swicicki used profanity in his initial complaint or his phone statement. § 87(2)(b) did not corroborate PO Swicicki’s use of profanity in her phone statement, though she noted that she was inside the nearby restaurant during a portion of § 87(2)(b)’s interaction with PO Swicicki, and that when she emerged PO Swicicki was yelling at § 87(2)(b). PO Swicicki alleged that he did not curse while in the presence of § 87(2)(b) and PO Zaldivar alleged that he did not hear PO Swicicki curse while in the presence of § 87(2)(b). § 87(2)(g)

[REDACTED]

Team: _____

:

Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date